(3) (1)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

CRIMINAL REVISION NO. 109 /06

APPLICANT

Roshan @ Binu,
S/o Shri Mohan Sai, Aged about – 15 years, R/o Village – Hospital Dafai, Chirmiri, Thana- Chirmiri, District - Korea, (C.G.).

Vs.

RESPONDENT

State of Chhattisgarh, Through: Station House Officer, Chirmiri, District – Korea, (C.G.)

CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE (AGAINST THE JUDGEMENT DATED 06/01/2006 PASSED BY FIRST UPPER SESSIONS JUDGE, AMBIKAPUR IN CRIMINAL APPEAL NO. – 322/05 IN THE CASE OF JUVENILE OFFENDER ROSHAN @ BINU IN WHICH APPEAL UNDER SECTION 53 OF JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT 2000.

(18)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.Rev. 109/ सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23.03.2006

Applicant by Shri Rakesh Jha, Advocate.

State by Shri U.K.S.Chandel, Panel Lawyer.

Learned counsel for the applicant prays that this revision be heard and disposed of finally at the stage of admission.

Prayer is not opposed.

Arguments were heard.

This revision is directed against an order dated 6.1.2006 passed by the 1st Additional Sessions Judge, Ambikapur, Surguja in Criminal Appeal No.322/2005 whereby the order dated 28.12.2005 passed by Juvenile Justice Board, Ambikapur in Criminal Case No. 407/2005 refusing to grant bail to the applicant herein was affirmed.

Briefly stated the facts are that prosecution under Sections 363, 366 and 376 I.P.C. was launched by Police Station Chirimiri before the Juvenile Justice Board Ambikapur against the applicant, aged about 15 years. It was alleged that the applicant had abducted Jyoti, a girl aged about 18 years from the lawful guardianship of her parents with intent to compel her to marry him and in order that she may be forced to illicit intercourse. Juvenile Justice Board rejected the application

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act') on the ground that release of the juvenile would defeat the ends of justice. The appellate Court has also held that considering the rise in offences against women the release of the applicant would defeat the ends of justice.

Learned counsel for the applicant has contended that the prosecutrix is aged about 18 years and was in love with the applicant since 4 - 5 years and has married the applicant. Besides this, it was also argued that the evidence of the prosecutrix was recorded by the Juvenile Justice Board and she did not support the prosecution story and was declared hostile. It was urged that none of the grounds for refusing to grant bail under sub-section (1) of Section 12 of the Act were satisfied, and therefore, the applicant should be released on bail. On the other hand, Shri U.K.S.Chandel, Panel Lawyer has opposed the application, though formally.

Having heard rival contentions, I have gone through the record. The mandate of Section 12 of the Act to release any person accused of a bailable or non-bailable offence and apparently a juvenile when arrested or detained or having

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appeared or is brought before a Board is subject to only three exceptions. A reasonable ground must exist for believing that the release :

i) is likely to bring the juvenile into association with any known criminal; or

ii) expose him to moral, physical or psychological danger; or

iii) that his release would defeat the ends of justice.

Unless there appear reasonable grounds to justify the existence of one or more of the conditions mentioned above, the mandate of Section 12 to release the juvenile on bail would be attracted.

In the F.I.R. dated 21.8.2005 lodged by the father of the prosecutrix, it was mentioned that about 4 months prior to the date of occurrence the prosecutrix had eloped with the applicant herein. The evidence of the prosecutrix was recorded by Juvenile Justice Board wherein she has stated that she was aged 18 years and knew the applicant since about 4 - 5 years and was living as the wife of the applicant herein in his house. She has categorically denied that the applicant herein had committed rape on her or that he had abducted her after being lured for marriage.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In view of the testimony of the prosecutrix P.W.1 recorded by the Juvenile Justice Board, it is clear that none of the conditions enumerated in sub-section (1) of Section 12 of the Act 2000 exist. It is settled law that the existence of one of the three conditions mentioned in sub-clause (1) of Section 12 is a *sine qua non* for refusing to grant bail. In the aforesaid circumstances, the applicant is entitled to be released on bail.

In the result, this revision is allowed. The order dated 6.1.2006 passed in Criminal Appeal No.3220/2005 is set aside. It is ordered that the applicant shall be released on his furnishing a solvent surety for Rs.10,000/- to the satisfaction of the Juvenile Justice Board for his regular appearance during trial.

Certified copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

[पीछे देखिये

27.3.06 4.4.06